

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

BRISTOL-MYERS SQUIBB CO., E.R.	)	
SQUIBB & SONS L.L.C., ONO	)	
PHARMACEUTICAL CO., LTD., and	)	
TASUKU HONJO,	)	
	)	
Plaintiffs,	)	
	)	Misc. No.
v.	)	
	)	
MERCK & CO., INC and MERCK SHARP	)	
& DOHME CORP.,	)	
	)	
Defendants.	)	

**MOTION TO MODIFY MERCK’S THIRD-PARTY SUBPOENAS TO DANA FARBER  
CANCER INSTITUTE, INC. AND GORDON FREEMAN**

Pursuant to Federal Rules of Civil Procedure 26(c) and 45(d)(3), Dana-Farber Cancer Institute, Inc. (“Dana-Farber”) and its employee Gordon Freeman, Ph.D. (“Freeman”) hereby move the Court for an order modifying the time allowed for Dana-Farber and Freeman to respond to two third-party subpoenas issued by Merck & Co., Inc. and Merck Sharp & Dohme Corp. (collectively, “Merck”) in *Bristol-Myers Squibb Co. et al v. Merck & Co Inc.*, C.A. Nos. 14-1131, 15-560 & 15-572 (D. Del.).

Dana-Farber and Freeman respectfully request that the Court order that they not be required to produce documents until Bristol-Myers Squibb Co., E.R. Squibb & Sons L.L.C., (together, “BMS”) and Tasuku Honjo (“Honjo”)—who are plaintiffs in the District of Delaware action and also are defendants in a case brought by Dana-Farber presently pending before Judge Wolf in this Court—provide full and complete answers to Dana-Farber’s first set of interrogatories to Honjo and certify that they completed substantial production of all documents responsive to Dana-Farber’s first set of document requests, both served in January in *Dana-*

*Farber Cancer Institute, Inc. v. Ono Pharmaceutical Co., Ltd. et al.*, C.A. No. 15-cv-13443-MLW (D. Mass.).

This Motion, including the relief requested, is directly related to Dana-Farber's motion to compel discovery now pending before Judge Wolf in *Dana-Farber v. Ono Pharma*. Dana-Farber respectfully suggests that this motion be referred to Judge Wolf so that the two motions, filed contemporaneously, can be resolved together.

#### **CERTIFICATE PURSUANT TO LOCAL RULE 7.1**

The undersigned hereby certifies that counsel for moving third parties Dana-Farber and Gordon Freeman conferred with counsel for Merck, and that counsel for Merck does not assent to this motion.

#### **REQUEST FOR ORAL ARGUMENT**

Pursuant to L.R. 7.1(D), Dana-Farber and Gordon Freeman believe that oral argument may assist the Court and respectfully request the opportunity to be heard.

Respectfully submitted,

DANA-FARBER CANCER INSTITUTE, INC.,  
and GORDON FREEMAN

By their attorneys,

/s/ Barbara A. Fiacco

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Dated: March 18, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on March 18, 2016 a true and accurate copy of this document, which was filed via the Court's ECF system, will be sent via U.S. Mail and email to the following counsel for Merck & Co., Inc., and Merck Sharp & Dohme Corp.:

Kirsten E. Braun, Esq.  
Jeffrey P. Kushan, Esq.  
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Washington, D.C. 20005

/s/ Barbara A. Fiacco  
Barbara A. Fiacco

Dated: March 18, 2016